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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,287	12/29/2000	Gopal N. Iyer	00260	8913
7590	12/05/2003			EXAMINER SMITH, SHEILA B
Michael D. Lazzara Kirkpatrick & Lockhart LLP 535 Smithfield Street Pittsburgh, PA 15222			ART UNIT 2681	PAPER NUMBER 6
DATE MAILED: 12/05/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/751,287	IYER, GOPAL N.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sheila B. Smith	2681	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-16 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ . | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-16 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-16 of copending Application No. 09/751456. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: performing a first phone call using said telephone equipment to obtain a first set of call specific drive test data from an area covered by said wireless network.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

***Regarding claims 1-6, 13-16,*** Application No. 09/751456 claims performing a first phone call using said telephone equipment to obtain a first set of call specific drive test data from an area covered by said wireless network, Application No. 09/751456 also claims wherein said first set of data includes at least a time element of said first phone call; instructions for performing a second phone call using said telephonet equipment to perform an RF call trace in connection with said drive test and to obtain a second set of call specific data, wherein said second set of data includes at least a time element of said second phone call; instructions for combining said first and second sets of data into a combined output file based on respective said time elements of said first and second phone calls; Application No. 09/751456 also claims to specifically disclose generating a graphical representation of call specific data in a wireless network in conjunction with telephone equipment, and instructions for processing said combined output file in a thematic mapping software program to provide a graphical representation of said combined output file

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakakura (U.S. Patent Number 5,357,557) in view of Wojcik (U. S. Patent Number 6,525,657).

*Regarding claims 1-6, 13-16,* Sakakura discloses essentially all the claimed invention as set fourth in the instant application, further Sakakura discloses a inter-mobile terminal testing method in cellular automobile telephone system. In addition Sakakura discloses performing a first phone call using said Xtel equipment (which reads on a call C1 is made from the first terminal 31 as a start point in the test sequence to the second terminal 32S of column 2 lines 37-39) to obtain a first set of call specific drive test data from an area covered by said wireless network (which reads on column 2 lines 7-15), wherein said first set of data includes at least a time element of said first phone call (which reads on column 2 lines 64-65); instructions for performing a second phone call using said Lucent equipment to perform an RF call trace in connection with said drive test and to obtain a second set of call specific data (which reads on column 2 lines 60-65), wherein said second set of data includes at least a time element of said second phone call (which reads on column 2 lines 42-48 and column 3 lines 57-60); instructions for combining said first and second sets of data into a combined output file based on respective said time elements of said first and second phone calls (which reads on a call C5 is made from the first terminal 31 to the cellular automobile telephone exchange 20 to transmit the accumulated test result thereto column 3 lines 46-49); however, Sakakura fails to specifically disclose Xtel and Lucent equipment and generating a graphical representation of call specific data in a wireless network in conjunction with Xtel and Lucent equipment, and instructions for processing said combined output file in a thematic mapping software program to provide a graphical representation of said combined output file.

In the same field of endeavor, Wojcik further discloses a apparatus and method for production testing of the RF performance of wireless communication device. In addition

Wojcik discloses "specifically, the inventor has found that for any given product design a reference "SAR Signature" map for that product can be produced" which reads on generating a graphical representation of call specific data in a wireless network in conjunction with Xtel and Lucent equipment and instructions for processing said combined output file in a thematic mapping software program to provide a graphical representation of said combined output file as disclosed in column 3 lines 9-15 and column 4 lines 23-30. Additionally in view of the fact that the applicant disclosed in the specification that Xtel and Lucent equipment is "the name of telephone equipment" Sakakura does provide for telephone equipment which more than adequately meet the limitation.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to improve Sakakura by modifying a inter-mobile terminal testing method in cellular automobile telephone system, with generating a graphical representation of call specific data in a wireless network in conjunction with Xtel and Lucent equipment, and instructions for processing said combined output file in a thematic mapping software program to provide a graphical representation of said combined output file as taught by Wojcik for the purpose of producing statistical analyses based on measurement results.

*Regarding claims 7--12,* Sakakura discloses essentially all the claimed invention as set fourth in the instant application, further Sakakura discloses a inter-mobile terminal testing method in cellular automobile telephone system. In addition Sakakura discloses performing a first phone call using said Xtel equipment (which reads on Sakakura terminal of column 2 lines 23-24) to obtain a first set of call specific drive test data from an area covered by said wireless network (which reads on column 2 lines 7-15), wherein said first set of data includes at least a

time element of said first phone call (which reads on column 2 lines 64-65); instructions for performing a second phone call using said Lucent equipment to perform an RF call trace in connection with said drive test and to obtain a second set of call specific data (which reads on column 2 lines 60-65), wherein said second set of data includes at least a time element of said second phone call (which reads on column 2 lines 42-48 and column 3 lines 57-60); instructions for combining said first and second sets of data into a combined output file based on respective said time elements of said first and second phone calls (which reads on column 3 lines 20-24); a computer readable medium (which reads on the mobile phone) containing instructions; however, Sakakura fails to specifically disclose generating a graphical representation of call specific data in a wireless network in conjunction with Xtel and Lucent equipment, and instructions for processing said combined output file in a thematic mapping software program to provide a graphical representation of said combined output file.

In the same field of endeavor, Wojcik further discloses a apparatus and method for production testing of the RF performance of wireless communication device. In addition Wojcik discloses "specifically, the inventor has found that for any given product design a reference "SAR Signature" map for that product can be produced" which reads on generating a graphical representation of call specific data in a wireless network in conjunction with Xtel and Lucent equipment and instructions for processing said combined output file in a thematic mapping software program to provide a graphical representation of said combined output file as disclosed in column 3 lines 9-15 and column 4 lines 23-30.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to improve Sakakura by modifying a inter-mobile terminal testing method in

cellular automobile telephone system, with generating a graphical representation of call specific data in a wireless network in conjunction with Xtel and Lucent equipment, and instructions for processing said combined output file in a thematic mapping software program to provide a graphical representation of said combined output file as taught by Wojcik for the purpose of producing statistical analyses based on measurement results.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheila B. Smith whose telephone number is (703)305-0104. The examiner can normally be reached on Monday-Thursday 6:00 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 703-305-4040. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-0104.

S.Smith  
November 26, 2003

  
**SINH TRAN**  
**PRIMARY EXAMINER**